IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3679 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TASLIM ALAM BAVA SAHEB TIRMIZI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3679 of 2001

MR KAMEN SHUKLA for MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the

Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated December 25, 2000 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act as two cases under Sections 324, 323, and 114 of the IPC and Section 135(1) of B.P.Act are registered against the petitioner which are pending trial and statements of two anonymous witnesses are recorded in an unregistered cases and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the identity of those witnesses and thereby detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Kamen Shukla, learned advocate for the petitioner has restricted his arguments to the effect that so far as two cases registered against the petitioner are concerned, they do not reflect the disturbance of the public order, they only reflect the disturbance of law and order situation. In support of his aforesaid submission, he drew the attention of this Court to the contents of all the FIRs lodged against the petitioner. On having perusal of the FIRs, it can be said that offences registered against the petitioner are only breach of the law and order situation. Therefore, order recorded by the detaining authority suffers from vices of non-application of mind which according to him is liable to be quashed. Besides this, the privilege claimed under Section 9(2) of the Act by the detaining authority cannot be called genuine in view of the fact that the detaining authority has passed the order of detention immediately on the next date after recording of the statements of two anonymous witnesses and, therefore, it can be said that the detaining authority has no sufficient time to examine the statements of those

witnesses and therefore, according to him the order of detention stand vitiated on both the aforesaid grounds. He, therefore, urged to allow this petition by quashing the impugned order of detention and setting the petitioner at liberty forthwith.

5. Mr. S.S.Patel, learned AGP appeared on behalf the respondent State and has contested the petition by filing affidavit in reply sworn by P.C.Pande, Commissioner of Police, Ahmedabad City, Ahmedabad wherein, inter alia, the entire activity of the petitioner/detenu has been narrated. Mr. Patel contended that the petitioner is a dangerous person and the second FIR came to be registered against him because he went to the house of the complainant of the first FIR with a view to compound the first offence by giving threat to him, therefore, said act on the part of the detenu is a breach of the public order and, therefore, order of detention passed against the petitioner/detenu does not suffer from the vices of non-application of mind. He, therefore, urged to dismiss the petition.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. "Public Order" is an expression of wide connotation and signifies that state of tranquillity prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. "Public Order" is synonymous with public safety and tranquillity. It is the absence of disorder involving breaches of local significance in contradistinction to to national upheavals, such as revolution, civil strife, war affecting the security of the State. The overlap of public order and public tranquillity is only partial. the terms are not always synonymous. The latter is a much wider expression and takes in many things which cannot be described as public disorder. The words 'public order' and 'public tranquillity' overlap to a certain extent but there are matters which disturb public tranquillity without being a disturbance of public order. In short, it is not the same as maintenance of law and order. Maintenance of law and order means the prevention of disorders of comparatively lesser gravity and of local significance. Individual actions which do not disturb the even tempo of life in the society in the society and community or do not cause apprehension in the minds of the residents of the locality in regard to maintenance of

public order.

8. Keeping in view the aforesaid aspect of distinction between the breach of the public order and breach of law and order situation, if we examine all the FIRs lodged against the present petitioner, it cannot be termed as breach of the public order, it only reflects breach of the law and order situation. The detaining authority has considered the contents of the said FIR as the breach of the public order which is erroneous and, therefore, order of detention passed by the detaining authority cannot be called genuine and therefore, the order of detention stands vitiated and the petition deserves to be allowed by quashing and setting the impugned order of detention and setting the petitioner at liberty forthwith.

9. Besides this, privilege claimed under Section 9(2) of the Act also cannot be called genuine. While passing the impugned order of detention, the detaining authority has also relied upon the statements of two anonymous witnesses which are recorded on December 26, 2000 and verified by the detaining authority on December 27, 2000 and the order of detention came to be passed on the next date i.e. on December 28, 2000.

10. A similar question arose in the case of KALIDAS C KAHAR V. STATE OF GUJARAT 1993 (2) GLR 1659 in which proposal was made on October 16, 1992 and detention order was passed on October 17, 1992 and therefore, it was held to be a wrong exercise of power under Section 9(2) which has affected the detenu's right of making an effective representation under Article 22(5) of the Constitution and, therefore, the detention order was quashed.

11. Applying the principle laid down by this Court in the case of Kalidas's case (supra) it is clear that the present case is identical to the case referred to above. In the present case also statements of two witnesses are recorded on December 26, 2000 and verified by the detaining authority on December 27, 2000 and the order of detention came to be passed on the next day i.e on December 28, 2000, and hence, I am of the opinion that the order impugned cannot be sustained and deserves to be quashed and set aside.

12. On overall view of the matter the order of detention passed by the detaining authority suffers from non-application of mind and the privilege claimed under Section 9(2) of the Act also cannot be called genuine and, therefore, order of detention stand vitiated on both

the aforesaid grounds and the petition deserves to be allowed by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

13. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated December 28, 2000 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*